

Before the
Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

National Exchange Carrier Association)
Petition to Amend Section 69.104 of the)
Commission's Rules)

WC Docket No. 04-259
RM-10603

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REPLY COMMENTS OF EARTHLINK, INC.

EarthLink, Inc. ("EarthLink"), by its attorneys and in response to comments filed in the above-captioned proceeding, urges the Commission to review and reduce the number of subscriber line charges ("SLCs") assessed to PRI-ISDN and T1 services offered by price-cap and rate-of-return incumbent local exchange carriers ("ILECs"). The evidence in the record demonstrates that the current SLC assessments for these services do not reflect the ILECs' costs of service, and so retaining current SLC levels would have the Commission continue to create inefficiencies in the market and skew demand away from these critical services.

In this proceeding, it is essential for the Commission to follow its precedent and sound economic policy that SLCs be set to the relative nontraffic sensitive ("NTS") costs of the particular derived channel service. In 1997, the Commission's *Access Charge First Report and Order* determined that the assessment of SLCs for derived-channel ISDN services such as BRI-ISDN and PRI-ISDN must be consistent with the "goal of . . . realigning cost recovery in a manner that more closely reflects the manner in which those costs are incurred."¹ Assessing SLCs at a level greater than the relative actual costs of the service would disserve the public

¹ *In the Matter of Access Charge Reform, First Report and Order*, 12 FCC Rcd. 15982, ¶ (1997), *aff'd*, *Southwestern Bell v. FCC*, 153 F.2d 523 (8th Cir. 1998) ("*Access Charge First Report and Order*").

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interest, the Commission concluded, by “artificially discourage[ing] efficient use of ISDN.”²

Accordingly, the Commission required ILECs to assess SLCs on ISDN services on the basis of the record evidence of the relative nontraffic sensitive loop costs of those services relative to analog voice service.³ At the time, the Commission declined to address other derived channel services only because “[t]he record does not contain sufficient information to enable us to determine the relative NTS costs of derived channel services other than ISDN.”⁴ In 2001, the Commission’s *MAG Order* affirmed this approach of setting ISDN SLCs on the basis of costs of service relative to analog service, and extended its SLC rule to rate-of-return carriers.⁵

The record in this proceeding now demonstrates that the relative NTS costs of T1 services justifies a reduction in the number of SLCs assessed on T1 services. Specifically, the results of the NECA survey show that “the T-1-to-POTS line cost ratio is 3.58:1.”⁶ Indeed, the NECA study demonstrates that the “weighted averages of the common line portion of the cost ratios of both DCS [T1] to POTS and PRI-ISDN to POTS are around 3:1.”⁷ Following the Commission’s approach of setting SLCs in alignment with costs, the Commission should set a 3 SLC assessment on T1 services for both price-cap and rate-of-return ILECs.

The NECA study also shows that the current rules assessing 5 SLCs to PRI-ISDN service should be modified somewhat to assess 3 SLCs for those services. As the NECA study shows, “[b]ecause DCS and PRI-ISDN use the same loop technology, they have the same cost

² *Id.*

³ *Id.*, ¶ 116.

⁴ *Id.*, ¶ 120.

⁵ *Multi-Association Group Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers, Second Report and Order and Notice of Proposed Rulemaking*, 16 FCC Rcd. 19613, ¶ 56 n. 176 (2001) (“*MAG Order*”).

⁶ Comments of the National Exchange Carrier Association (“NECA”), at 8 (filed Nov. 12, 2004).

⁷ *Id.*, Attachment B2.

relationship to POTS line costs. The weighted average cost ratios to POTS (2.7 for DCS and 2.8 for PRI-ISDN) are virtually the same”⁸ Notably, price-cap LECs have offered no evidence to dispute these cost ratios.

Charging customers of T1 services more than the relative costs of those services would also be contrary to the Commission’s broadband goals and to Section 706 of the 1996 Act, which charges the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans”⁹ There is no question that T1 services are “advanced telecommunications” services as defined by the Commission.¹⁰ Further, many Internet service providers use T1 services to deliver broadband Internet services to the American public. In addition, many businesses as well as residential customers (e.g., MDUs) use T1 services of incumbent LECs to obtain high-speed Internet connectivity. The imposition of non-cost based SLC charges is antithetical to the federal broadband goals because, by increasing their costs to end users, such charges artificially diminish the use and demand for these services.

The commenters that oppose reconciling the SLC rules with the relative costs of PRI-ISDN and T1 services have provided no persuasive arguments against timely reform of the SLC rules. Instead, these commenters generally allege that if SLC reforms are implemented then other services might unfairly bear the brunt of ILEC revenue adjustments or other cost recovery

⁸ NECA Comments at 8.

⁹ Telecommunications Act of 1996 Act, § 706(a).

¹⁰ *In the Matter of Availability of Advanced Telecommunications Capability in the United States, Fourth Report to Congress*, FCC 04-208, at 12 (rel. Sept. 9, 2004) (explaining that “advanced telecommunications capability” has been defined by the Commission as services and facilities that offer transmission speeds of more than 200 kbps in both directions.).

reform may be necessary.¹¹ This alleged "harm," however, is a result of the widely acknowledged inefficiencies encumbering many aspects of the intercarrier compensation process. These are not legitimate arguments against Commission resolution of a problem faced squarely in the record here that requires setting SLC charges accurately to reflect costs. If other services are in need of reform, the Commission has initiated proceedings to undertake those tasks.¹² It is no good reason to decline to reform or to forestall SLC charge reform in this proceeding.

For the foregoing reasons, EarthLink urges the Commission to set SLC rules in a manner that better reflects relative costs and, specifically, to require ILECs to charge no more than 3 SLCs for PRI-ISDN and T1 services.

Respectfully submitted,

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Date: December 13, 2004

¹¹ See, e.g., Comments of AT&T Corp., at 2 (SLC changes would shift revenue recovery to other mechanisms). While AT&T recognizes that it is most efficient to recover costs (and no more) from the cost-causer, AT&T nonetheless rejects proposals to realign SLC assessments to reflect costs. *Id.*, at 3. Given that aligning SLC cost recovery with costs would actually reduce an implicit and ongoing subsidy, AT&T wrongly suggests that SLC reform would cause "subsidies" to flow to T1 and PRI-ISDN users if SLC charges were to better reflect costs. *Id.*, at 5.

¹² For example, further action on intercarrier compensation in CC Docket No. 01-92 is near. Communications Daily, at 3 (Dec. 2, 2004) ("FCC May Seek Comments Soon on Intercarrier Compensation").

CERTIFICATE OF SERVICE

I, Sybil Anne Strimbu, state that copies of the foregoing *Reply Comments of EarthLink, Inc.* were submitted to the FCC and sent via regular mail, this day, December 13, 2004, to the following:

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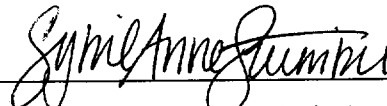
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